CASE NO.: 50T5646.01   PATENT
Serial No.: 10/668,468   Filed: September 23, 2003
March 9, 2007
Page 5

Remarks

Reconsideration of the above-captioned application is respectfully requested. Claims 11-18 have been

properly renumbered herein, and references to claims by number below are relative to the corrected (new)

numbering.

Claims 1 and 2 have been rejected under 35 U.S.C. §103 as being unpatentable over Ebuchi et al.,

USPP 2001/0030565 in view of Boerstler, USPP 2002/0172312. Independent Claim 7 and dependent Claims

3 and 8 have been rejected under 35 U.S.C. §103 as being unpatentable over Ebuchi et al. in view of Boerstler

and further in view of Wang et al., USPN 7,020,227, and dependent Claims 4-6 have been rejected under 35

U.S.C. §103 as being unpatentable over Ebuchi et al. in view of Boerstler and further in view of Tang et al.,

USPP 2002/0056854. Dependent Claims 9-11 have been rejected under 35 U.S.C. §103 as being unpatentable

over Ebuchi et al. in view of Boerstler and further in view of Wang and Tang. Independent Claim 12 and

dependent Claims 13 and 15-17 have been rejected under 35 U.S.C. §103 as being unpatentable over Boerstler

in view of Wang, and dependent Claim 14 has been rejected under 35 U.S.C. §103 as being unpatentable over

Boerstler in view of Wang and further in view of alleged admissions of prior art in the background of the

present specification.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied

references and countering certain rejections must not be construed as acquiescence in other portions of

rejections not specifically addressed.

1168-97.AMD

CASE NO.: 50T5646.01   PATENT
Serial No.: 10/668,468   Filed: September 23, 2003
March 9, 2007
Page 6

To overcome the Examiner's rejections, independent Claim 12 has been amended to recite that each

clock pulse is composed of two signals, one being the opposite phase of the other as taught in the present

specification on page 5, lines 6 and 7. Claims 1-17 remain pending.

Rejections Under 35 U.S.C. §103

Claims 1 and 2 have been rejected under 35 U.S.C. §103 as being unpatentable over Ebuchi et al.,

USPP 2001/0030565 in view of Boerstler, USPP 2002/0172312, relying in the main on paragraph 60 and

figure 9 of Boerstler. Independent Claim 7 and dependent Claims 3 and 8 have been rejected under 35 U.S.C.

§103 as being unpatentable over Ebuchi et al. in view of Boerstler and further in view of Wang et al., USPN

7,020,227, and dependent Claims 4-6 have been rejected under 35 U.S.C. §103 as being unpatentable over

Ebuchi et al. in view of Boerstler and further in view of Tang et al., USPP 2002/0056854. Dependent Claims

9-11 have been rejected under 35 U.S.C. §103 as being unpatentable over Ebuchi et al. in view of Boerstler

and further in view of Wang and Tang. Independent Claim 12 and dependent Claims 13 and 15-17 have been

rejected under 35 U.S.C. §103 as being unpatentable over Boerstler in view of Wang, and dependent Claim

14 has been rejected under 35 U.S.C. §103 as being unpatentable over Boerstler in view of Wang and further

in view of alleged admissions of prior art in the background of the present specification.

None of the relied-upon references appear to teach or suggest that the clock pulse is composed of two

signals of opposite phase as now recited in Claim 12. The rejection of Claim 12 and its respective dependent

claims is overcome.

1168-97.AMD

BEST AVAILABLE COPY

Turning to independent Claims 1 and 7, there is no fair prior art suggestion to combine the references as proposed, and even if combined as proposed, Claims 1 and 7 would not be reached.

As to the first point, Ebuchi et al. is not directed to jitter; it nowhere even mentions the term. The reason Ebuchi et al. generates multiple phases from a clock is to permit lower operation of CMOS devices, paragraph 2; Ebuchi et al. is specifically directed to providing such a multiphase device that can be implemented with a desired phase difference, paragraph 7. Thus, the proferred suggestion to combine the jitter-related reference of Boerstler (which thus is not, *pace* the repeated allegation in the Office Action on page 3, first line and page 4, third last line "in the same field of endeavor" as Ebuchi et al.) might have relevance to Boerstler but not to Ebuchi et al. Moreover, given that Ebuchi et al. is directed to something entirely different from jitter correction, modifying it with Boerstler as proposed has at most dubious chance of success, nor has the examiner attempted to argue otherwise, see MPEP §2142. Indeed, forcing the square peg of Boerstler's jitter correction invention into the round hole of Ebuchi et al.'s selectable phase difference invention logically would be expected to entail unforeseen complications. For this reason, the rejection of Claims 1 and 7 and their dependent claims has been overcome.

Furthermore, as mentioned above combining Ebuchi et al. with Boerstler would not reach Claims 1 and 7. The examiner has relied on the multiphase clock generated from the oscillator of Ebuchi et al. as the claimed "correction clock pulse". Fine. Boerstler, however, teaches no such derivation of a clock. Instead, it teaches selecting a phase *of the oscillator itself* and then using the selected phase to sample data for purposes of jitter correction in figure 9 and paragraph 60 relied on in the rejection. Accordingly, Boerstler at most modifies Ebuchi et al. to select a phase from the oscillator of Ebuchi et al. for purposes of jitter correction as taught by Boerstler. Boerstler, however, cannot suggest modifying the relied-upon multiphase

1168-97.AMD

clock of Ebuchi et al. for use in jitter correction: the relied-upon paragraph 60 of Boerstler never gets to the point of generating a derivative multiphase clock, and of course Ebuchi et al. cannot suggest such use since it is nowhere directed to jitter correction in the first place. The rejections thus fall for failing to identify references that could be combined in accordance with what they teach to reach Claims 1 and 7.

Further comments must be made relating to the rejection of Claim 7 specifically. The rejection is pinned on the unsupported allegation that "it is well known in the art that if data streams have been received in parallel instead of serial, the parts of the data streams that overlap with each other are jitter free." First, it is unclear how this allegation relates to Claim 7 or to the shortcomings of the references discussed above. Those shortcomings remain. Second and as important, an allegation wholly unsupported by evidence that a highly technical detail of engineering is "well known" simply will not do in rejecting claims under U.S. law. Evidence is hereby seasonably requested of the allegation, and not only that, but evidence that the allegedly well-known feature is known to be incorporated into a correction clock signal derived from an oscillator to correct jitter must also be presented.

Wang has been used in the rejection of Claim 7 for the proposition that data streams should be sent in parallel instead of serial "to reduce the required processing speed of the phase detector." Setting aside whether this is truly what Wang teaches, on its face it is irrelevant. The claims are not directed to reducing processing speed. They are directed to jitter correction.

The rejection of dependent Claim 14 using, as an alleged "admission of prior art", the discussion on page 1 of the present specification is legally illegitimate. Nowhere does the present specification state that anything is "prior art". The relied-upon discussion does not even imply that what is being discussed is prior art to the claims. Under the law, admissions of "prior art" are characterized by describing certain work as

1168-97.AMD

CASE NO.: 50T5646.01   PATENT
Serial No.: 10/668,468   Filed: September 23, 2003
March 9, 2007
Page 9

"prior art", <u>Abbott Laboratories v. Baxter Pharmaceutical Products, Inc.</u>, 334 F.3d 1274 (Fed. Cir. 2003); <u>In re Nomiya</u>, 509 F.2d 566 (CCPA 1975); <u>In re Fout</u>, 675 F.2d 297 (CCPA 1982). The rejection thus improperly characterizes something as an "admission" when in fact it is not.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,

John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg

1168-97.AMD